

Food and Nutrition Service, USDA

§ 235.11

FNS, OA, or the U.S. Comptroller General.

(Sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); secs. 804, 805, 812, 814, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1754, 1756, 1759, 1759a, 1771, 1773, 1774, 1776, and 1785))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 51186, Aug. 31, 1979; Amdt. 7, 47 FR 18567, Apr. 30, 1982; Amdt. 9, 48 FR 195, Jan. 4, 1983; 54 FR 2991, Jan. 23, 1989]

§ 235.9 Procurement and property management standards.

(a) *Requirements.* State agencies shall comply with the requirements of the Office of Management and Budget (OMB) Circular A-102 and the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart S (46 FR 55658) concerning the procurement of supplies, equipment and other services with State Administrative Expense Funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A-102 and 7 CFR part 3015 do not relieve the State agency of any contractual responsibilities under its contract. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A-102 and 7 CFR part 3015.

(d) *Property acquired with State administrative expense funds.* State Agencies shall comply with the requirements of OMB Circular A-102 and 7 CFR part

3015, subpart R (46 FR 55654) in their utilization and disposition of property acquired in whole or in part with State Administrative Expense Funds.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 9, 48 FR 19355, Apr. 29, 1983]

§ 235.10 [Reserved]

§ 235.11 Other provisions.

(a) *State funds.* Expenditures of funds from State sources in any fiscal year for the administration of the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program shall not be less than that expended or obligated in fiscal year 1977. Failure of a State to maintain this level of funding will result in the total withdrawal of SAE funds. State agencies shall follow, as applicable, the provisions of Office of Management and Budget Circular A-102, Attachments F and G and 7 CFR part 3015, subparts G and H in identifying and documenting expenditures of funds from State revenues to meet the State funding requirement of this paragraph.

(b) *Sanctions imposed.* (1) FNS may recover, withhold or cancel payment of up to one hundred (100) percent of the funds payable to a State agency under this part, whenever it is determined by FNS that the State agency has failed to comply with the requirements contained in this part and in parts 210, 215, 220 and 226 of this title and in part 250 of this title as it applies to the operation of the Food Distribution Program in schools and child and adult care institutions.

(2) In addition to the general provisions found in paragraph (b)(1) of this section, FNS may, for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33⅓) percent of the funds payable to, and to be used by, a State agency under § 235.4(a)(1) and § 235.4(b)(3) for administration of school nutrition programs in FNS determines that a State agency is deficient in one or more of the following:

(i) Implementing the requirements in § 210.18;